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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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May 9, 2002

Bruce P. Beausejour, Esq.  
Barbara Anne Sousa, Esq.  
Verizon Massachusetts  
185 Franklin Street - Room 1403  
Boston, MA 02110

Re: Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 17, filed with the Department on April 10, 2002, to become effective May 10, 2002, by Verizon New England, Inc. d/b/a Verizon Massachusetts, D.T.E. 02-26

Dear Mr. Beausejour and Ms. Sousa:

On April 10, 2002, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon" or "VZ") filed with the Department of Telecommunications and Energy ("Department") revisions to its tariff M.D.T.E. No. 17. The proposed revisions would reduce the Department-approved rates for local switching and transport usage to the levels that Verizon is proposing be adopted in the Department's ongoing investigation into UNE rates, D.T.E. 01-20.<sup>1</sup> In addition, Verizon proposed to reduce the charges for Unbundled Telephone Company Reciprocal Compensation and Unbundled TC Reciprocal Compensation to be equivalent to the proposed

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<sup>1</sup> Investigation by the Department on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services, D.T.E. 01-20 ("UNE Rate Case").

terminating local switching rate. Verizon further proposed that these rates become effective immediately, subject to “true-up” based on a final order in the UNE Rate Case.

The Department requested and received comments from parties to D.T.E. 02-26 on Verizon’s proposed tariff revisions. Specifically, the Department sought comment on the question of suspension of the proposed tariff revisions.<sup>2</sup> The Department received comments from AT&T Communications of New England, Inc. (“AT&T”), the Attorney General of the Commonwealth of Massachusetts (“Attorney General” or “AG”), Z-Tel Communications, Inc. (“Z-Tel”), and WorldCom, Inc. (“WorldCom”). The Department received reply comments from Verizon.

The Attorney General, Z-Tel, and AT&T recommend that the Department permit Verizon’s proposed rate revisions to go into effect as of April 10, 2002, subject to the conclusions reached in the Department’s UNE Rate Case (AG Comments at 2; Z-Tel Comments at 1; AT&T Comments at 1). The Attorney General argues that allowing the reduced rates proposed by Verizon to go into effect immediately will lower the costs that competitors incur in leasing UNEs from Verizon (AG Comments at 2). These reductions, argues the Attorney General, will encourage more competitors to enter the market, and benefit consumers by increasing consumer choice (*id.*). The Attorney General further argues that suspension of the proposed rates would unfairly benefit Verizon, by allowing Verizon to lease UNEs at prices that are not based on Massachusetts-specific cost studies (*id.*). Z-Tel argues that permitting the lower rates to be effective as of April 10, 2002, will enable competitors to avail themselves of lower rates at the soonest possible time, subject to the Department’s decision on the merits (Z-Tel Comments at 1-2).

AT&T argues that the proposed rates in Verizon’s tariff filing are still too high, but are materially lower than current rates (AT&T Comments at 1). AT&T recommends that all switching rates – including dedicated trunk port rates that are not part of Verizon’s April 10, 2002 tariff filing – be reduced on an interim basis, and subject to retroactive true-up after the Department establishes lower rates in the UNE Rate Case (*id.* at 5-8).<sup>3</sup> AT&T further

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<sup>2</sup> Unless suspended for the purposes of further investigation, or unless good cause exists for an earlier effective date, proposed tariff revisions automatically go in effect thirty days after filing. See G.L. c. 159, § 19. The Department may suspend proposed tariffs for up to six months. G.L. c. 25, § 18. Verizon’s proposed revisions to M.D.T.E. No. 17 will take effect on May 10, 2002, unless suspended by the Department.

<sup>3</sup> AT&T also argues that the provisions in Verizon’s proposed tariff revisions regarding  
(continued...)

recommends that the Department direct Verizon to eliminate the “non-conversation time additive” in Verizon’s proposed tariff revisions, as this will be taken into account in the switching rates to be adopted in the UNE Rate Case (*id.* at 8-9). Finally, AT&T argues that the Department should reject Verizon’s proposed revisions to charges for intra-switch calls, as this also is under consideration in the UNE Rate Case (*id.* at 9).

WorldCom argues that Verizon’s proposal comes “too little too late” (WorldCom Comments at 1). Instead of permitting Verizon’s proposed rates to go into effect in the interim until issuance of the UNE Rate Case order, WorldCom argues that the Department should order Verizon to adopt switching and transport rates that are no higher than the rates recently approved by the New York Public Service Commission (“NYPSC”) (*id.*). WorldCom argues that because Verizon based its switching, transport, and line port rates on the New York rates in order to secure in-region long distance approval under 47 U.S.C. § 271 (“Section 271”) from the Federal Communications Commission (“FCC”), Verizon is under a continuing obligation to match its rates to the New York rates, at least until the Department issues its UNE Rate Case order (*id.* at 2). WorldCom further argues that the tariff revisions that Verizon is proposing (*i.e.*, the rates Verizon proposed be adopted in the UNE Rate Case) are grossly inflated, are not in compliance with the FCC’s total element long-run incremental cost (“TELRIC”) rules, and are unjust, unreasonable, and unjustly discriminatory under G.L. c. 159, § 14 (*id.*).

In its reply comments, Verizon states that the Department should permit Verizon’s proposed tariff revisions to go into effect, subject to true-up based on the pending UNE Rate Case order (VZ Reply Comments at 1). Verizon argues that WorldCom’s position is merely a restatement of its position in a case against Verizon presently before the FCC (*id.* at 2). Verizon further argues that this docket, opened to investigate Verizon’s proposed tariff filing establishing interim switching and transport rates, is not the place for the Department to choose permanent rates, rather that will be determined in the Department’s UNE Rate Case (*id.*). In response to AT&T’s comments, Verizon argues that, while AT&T agrees that the reduced rates should go into effect immediately, the Department should not accept the further rate changes that AT&T proposed in its comments (*id.* at 4-5). Verizon argues that its April 10, 2002 tariff filing is limited to addressing specific rates at issue in WorldCom’s FCC complaint, and therefore should not be taken as an opportunity to make other rate changes (*id.* at 5). Finally, Verizon argues that other issues raised by AT&T will be fully addressed by Verizon’s proposed true-up mechanism (*id.* at 5-6).

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<sup>3</sup>(...continued)

physical collocation are unlawful and should be rejected (AT&T Comments at 2-5). However, Verizon indicated in its reply comments that it was withdrawing those provisions from its proposed tariff (VZ Reply Comments at 4); therefore, we will not address those now-withdrawn provisions in this Order.

Verizon states that it is proposing the tariff revisions “to eliminate any question concerning our continuing compliance with Section 271 of the Telecommunications Act” (VZ April 10, 2002 Cover Letter at 2). On April 15, 2002, WorldCom filed a complaint with the FCC, pursuant to Section 271(d)(6)(B) of the Telecommunications Act of 1996, alleging that Verizon was no longer in compliance with the requirements of Section 271. In the Matter of WorldCom, Inc. v. Verizon New England, Inc., et al., FCC File No. EB-02-MD-017 (“WorldCom 271 Complaint”). Specifically, WorldCom alleges that because Verizon chose to meet its Section 271 obligations in Massachusetts by basing its switching, transport, and line port rates on the comparable rates in New York,<sup>4</sup> now that the NYPSC has reduced the New York rates<sup>5</sup> and Verizon has refused to lower its Massachusetts switching rates based on the NYPSC decision, the FCC should withdraw Verizon’s authority to provide in-region, interLATA services in Massachusetts until the Department adopts cost-based rates for unbundled local switching. WorldCom 271 Complaint at 3.

For several reasons, we conclude that suspension of Verizon’s proposed tariff revisions is the best approach. For the same reasons, we also decline to adopt WorldCom’s suggestion to order Verizon to implement the New York rates in the interim until issuance of the UNE Rate Case order. First, the UNE rates that are currently in effect, including the switching and transport rates that Verizon proposes to revise by its April 10, 2002 tariff filing, are TELRIC-compliant. As Verizon points out, when evaluating Verizon’s Section 271 application to provide in-region long distance services in Vermont, the FCC stated that “a mere difference in . . .

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<sup>4</sup> In October 2000, while its Section 271 application was pending before the FCC, Verizon proposed reducing its switching and transport rates to make those rates comparable to rates in effect in New York, in order to address concerns about whether the existing Massachusetts rates were TELRIC-compliant. The Department approved those rate reductions on October 13, 2000. On April 26, 2001, the FCC granted Verizon Section 271 authority for Massachusetts. In re Application of Verizon New England, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (rel. April 16, 2001) (“Massachusetts 271 Order”). Among other things, the FCC ruled that Verizon’s adoption of the New York local switching rates were legitimate and would result in Massachusetts rates that were well within a reasonable range as defined by the TELRIC cost model. Massachusetts 271 Order at ¶ 27. In addition, the FCC showed deference to the Department’s decision to accept the New York rates, noting that switching costs were similar in the two states. Id. at ¶ 21 n.56. The FCC rejected arguments that it should conduct a de novo review of UNE pricing in Massachusetts, citing lack of jurisdiction over state pricing decisions. Id. at ¶ 20.

<sup>5</sup> See Order on Unbundled Element Rates, NYPSC Case No. 98-C-1357 (Jan. 28, 2002).

switching rates” between two states does not demonstrate that the rates in one state are unlawful (VZ Reply Comments at 2-3). Also, as noted by Verizon, the FCC did not require in the Massachusetts 271 Order that Verizon must lower its switching and transport rates, were the New York rates to be reduced; the FCC only indicated that it might have to revisit the issue of Verizon’s Section 271 compliance (*id.* at 3). The Department’s investigation in the UNE Rate Case is part of a scheduled, five-year review of UNE rates, and is not based upon a conclusion that Verizon’s current rates are no longer in compliance with TELRIC. The TELRIC-compliant status of these rates is a matter already adjudicated. See Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-B (1997); Phase 4-D Order (1997) (setting interim UNE rates, transport, and termination charges); Investigation of UNE Rates Tariff of Bell Atlantic, D.T.E. 98-15-Phases II/III (March 19, 1999) (establishing permanent UNE rates). The mere fact that those TELRIC-compliant rates are under a long-scheduled review does not change their status and cannot until a superseding order of the Department issues. This is standard ratemaking: lawful rates remain in effect, whether under G.L. c. 159, § 14, or under G.L. c. 164, § 94.

Second, the Department is very close to completing its comprehensive review of all of Verizon’s TELRIC rates, including those rates that are the subject of Verizon’s tariff proposal.<sup>6</sup>

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<sup>6</sup> In the UNE Rate Case, the Department is conducting a scheduled review of Verizon’s proposed TELRIC rates according to the five-year cycle established in Investigation of UNE Rates Tariff of Bell Atlantic, D.T.E. 98-15-Phases II/III (March 19, 1999). This comprehensive review of Verizon’s and AT&T’s proposed cost models, encompassing recurring and nonrecurring costs, access to UNEs, collocation, and interconnection, is on the scope of the Department’s original TELRIC proceeding, Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, which began in 1996 and took several years to complete in four phases. The Department opened the UNE Rate Case on January 12, 2001 and scheduled evidentiary hearings for July 2001, with the intent of concluding the investigation by December 2001. However, numerous procedural delays, due to disputes and motions of the *parties*, necessitated postponement of the hearings – first until August-September 2001, and ultimately until January-February 2002. Much of the delay was due to discovery-related disputes involving the approximately 1,500 information requests. In the pre-hearing stage, parties filed several motions to compel discovery responses and motions to strike testimony, resulting in eight hearing officer rulings and five Interlocutory Orders. Consequently, *parties* also requested several extensions of dates for filing each round of testimony and for the hearings, *acknowledging* that the extensions would prevent the Department from concluding the investigation in the desired time period, but the *parties* indicated that such delay was preferable “to avoid compromising a full and thorough investigation of  
(continued...) ”

Hearings have concluded and we have received initial and reply briefs from the parties. A decision will be issued by early summer.<sup>7</sup> We find that the adjudicatory process for establishing new UNE rates should be allowed to run its course, particularly (but not only) where we are very close to a final decision, and should not be preempted by activities driven by federal litigation.

Verizon has chosen to enter into a global settlement of several matters between it and competitors in New York. WorldCom has chosen to file a complaint with the FCC, based on that settlement, to argue for immediate adoption of the New York UNE rates here in Massachusetts. Verizon has responded to that complaint by filing the April 10, 2002 proposed revisions to M.D.T.E. Tariff No. 17. Regardless of the reasons for the New York settlement and WorldCom's complaint filing, the Department has an obligation under G.L. c. 159, § 14, to "determine just and reasonable rates." The setting of such rates is what the extensive effort, now near the verge of completion, in D.T.E. 01-20 has been all about. Ordinarily, an investigation of proposed rates is a predicate to allowing new rates to take effect, especially where, as here, the rate change is both important and extensive. While the Department has, from time to time, allowed modest, often revenue-neutral, rate changes to take effect with but limited investigation, the Department very rarely would allow interim rates to take effect on the very verge of issuing a dispositive final order in the very same matter. Allowing a rate to take effect is an implicit statement that the rate is just and reasonable under § 14, and is, in the instant case, TELRIC-compliant under the 1996 Telecommunications Act. We are not prepared to make that judgment about Verizon's April 10 proposal. Our obligations to render a decision under Massachusetts law are as important as our obligation to set rates compliant with the 1996 Federal act.

Therefore, after review, consideration, and study of the above-captioned filing, the Department determines that suspension of Verizon's proposed tariff revisions is proper. Therefore, the Department suspends the above-captioned tariff revisions, and defers the use thereof, until November 10, 2002, unless we sooner order otherwise.

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<sup>6</sup>(...continued)

the issues in this proceeding" (see e.g., Appeal of CLEC Coalition to Extend Time, D.T.E. 01-20, at 2 (May 23, 2001)).

<sup>7</sup> Thus, the Department will have issued a final order in the UNE Rate Case prior to the FCC's 90-day deadline for ruling on WorldCom's Section 271 complaint.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Paul B. Vasington, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Eugene J. Sullivan, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Deirdre K. Manning, Commissioner

cc: D.T.E. 02-26 Service List